



DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[Docket No. FWS-R8-ES-2023-0025; FF08ESMF00-FXES11140800000-189]

Byron Sand Mine Evo East Quarry Expansion, Contra Costa County, California;

Draft Categorical Exclusion and Draft Habitat Conservation Plan

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the receipt of an application from G3 enterprises (applicant) for an incidental take permit (ITP) under the Endangered Species Act (ESA). The applicant requests an ITP to take the San Joaquin kit fox, the Central Valley distinct population segment of the California tiger salamander, the California red-legged frog, and the vernal pool fairy shrimp, incidental to the construction of the Byron Sand Mine Evo East Quarry Expansion Project in Contra Costa County, California. We request public comment on the application, which includes the applicant's proposed habitat conservation plan (HCP), and on the Service's preliminary determination that the proposed permitting action may be eligible for a categorical exclusion pursuant to the Council on Environmental Quality's National Environmental Policy Act (NEPA) regulations, the Department of the Interior's (DOI) NEPA regulations, and the DOI Departmental Manual. To make this preliminary determination, we prepared a draft environmental action statement and low-effect screening form, both of which are also available for public review. We invite comment from the public and local, State, Tribal, and Federal agencies. Before issuing the requested permit, we will take into consideration any information that we receive during the public comment period.

DATES: We must receive your written comments on or before [INSERT DATE 30

DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

ADDRESSES: *Obtaining Documents:* You may obtain copies of the documents online in Docket No. in Docket No. FWS-R8-ES-2023-0025 at <https://www.regulations.gov>.

Submitting Comments: To submit comments, please use one of the following methods, and note which document(s) your information requests or comments pertain to.

- *Internet:* Submit comments at <https://www.regulations.gov> under Docket No. FWS-R8-ES-2023-0025.
- *U.S. Mail:* Public Comments Processing, Attn: Docket No. FWS-R8-ES-2023-0025; U.S. Fish and Wildlife Service Headquarters, MS: PRB/3W; 5275 Leesburg Pike; Falls Church, VA 22041–3803.

For more information, see **Public Comments** and **Public Availability of Comments**, under **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Jason Hanni, Fish and Wildlife Biologist (jason_hanni@fws.gov), or Ryan Olah, Chief, Coast Bay Division (ryan_olah@fws.gov), Fish and Wildlife Service, Sacramento Fish and Wildlife Office, by phone at 916–414–6600. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: We, the U.S. Fish and Wildlife Service (Service), announce the receipt of an application from G3 enterprises (applicant) for a 20-year incidental take permit (ITP) under the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*). The applicant requests the ITP to take the federally listed as endangered San Joaquin kit fox (*Vulpes macrotis mutica*; kit fox), the threatened Central Valley distinct population segment (DPS) of the California tiger salamander

(*Ambystoma californiense*), the threatened California red-legged frog (*Rana draytonii*), and the threatened vernal pool fairy shrimp (*Branchinecta lynchi*), incidental to the construction of the Byron Sand Mine Evo East Quarry Expansion Project in Contra Costa County, California.

We request public comment on the application, which includes the applicant's habitat conservation plan (HCP), and on the Service's preliminary determination that this proposed ITP qualifies as "low effect," and may qualify for a categorical exclusion pursuant to the Council on Environmental Quality's National Environmental Policy Act (NEPA) regulations (40 CFR 1501.4), the Department of the Interior's (DOI) NEPA regulations (43 CFR 46), and the DOI's Departmental Manual (516 DM 8.5(C)(2)). To make this preliminary determination, we prepared a draft environmental action statement and low-effect screening form, both of which are also available for public review.

Background

Section 9 of the ESA (16 U.S.C. 1531–1544 *et seq.*) and Federal regulations (50 CFR part 17) prohibit the taking of fish and wildlife species listed as endangered or threatened under section 4 of the ESA. Under section 10(a)(1)(B) of the ESA (16 U.S.C. 1539(a)(1)(B)), we may issue permits to authorize take of listed fish and wildlife species that is incidental to, and not the purpose of, carrying out an otherwise lawful activity. Regulations governing permits for endangered and threatened species are at 50 CFR 17.22 and 17.32. For more about the Federal habitat conservation plan (HCP) program, go to <https://www.fws.gov/service/habitat-conservation-plans>.

Proposed Project

For the proposed project, the Service would issue an ITP to the applicant for a period of 20 years for certain covered activities (described below). The applicant has requested an ITP for four covered species.

Habitat Conservation Plan Area

The geographic scope of the draft HCP encompasses an 80-acre (ac) parcel, which encompasses both a 20-ac mine expansion area and a 60-ac mitigation area and is adjacent to the project site. The Evo East Expansion Project consists of a total disturbed area of 20 ac, which includes an estimated 15-ac mine expansion area and an estimated 5-ac overburden storage area where topsoil from the quarry will be stored for later use in reclamation. The proposed expansion and overburden areas are directly adjacent to the existing Evo East Quarry. The project would expand the approved Evo East footprint to the southeast, creating a single contiguous quarry that encompasses approximately 50 ac total. The Evo East Expansion Area would be mined in a sequential manner, with rejected material placed on depleted mining areas to avoid the need for separate reject material storage. The existing mine infrastructure would be used to complete mining operations. The remaining 60 ac within the plan area would not be disturbed and would be set aside as mitigation for the project. The proposed project is located at the southwest corner of Vasco Road and Camino Diablo Road in Byron, Contra Costa County, California.

Covered Activities

The proposed ESA section 10 ITP would allow take of four covered species from covered activities in the proposed HCP area. The applicant is requesting incidental take authorization for covered activities, including mining the approximately 15-ac site as well as utilizing an approximate 5-ac overburden pile that would occur in the project area. The applicant is proposing to implement a number of project design features, including best management practices, as well as general and species-specific avoidance and minimization measures to minimize the impacts of the take from the covered activities.

Covered Species

The federally listed as endangered San Joaquin kit fox, the threatened Central Valley DPS of the California tiger salamander, the threatened California red-legged frog, and the threatened vernal pool fairy shrimp are proposed to be included as covered

species in the proposed HCP.

Our Preliminary Determination

The Service has made a preliminary determination that the proposed applicant's project, including the construction of the quarry expansion project, would individually and cumulatively have a minor, nonsignificant effect on the proposed covered species and the human environment. Therefore, we have preliminarily determined that the proposed ESA section 10(a)(1)(B) permit would be a "low-effect" ITP that individually or cumulatively would have a minor effect on the proposed covered species and may qualify for application of a categorical exclusion pursuant to the Council on Environmental Quality's NEPA regulations, DOI's NEPA regulations, and the DOI Departmental Manual. A "low-effect" incidental take permit is one that would result in (1) minor or negligible effects on species covered in the HCP; (2) nonsignificant effects on the human environment; and (3) impacts that, when added together with the impacts of other past, present, and reasonable foreseeable actions, would not result in significant cumulative effects to the human environment.

Public Comments

We request data, comments, new information, or suggestions from the public, other concerned governmental agencies, the scientific community, Tribes, industry, or any other interested party on this notice and the documents we are making available for comment. We particularly seek comments on the following:

1. Biological information concerning the species;
2. Relevant data concerning the species;
3. Additional information concerning the ranges, distribution, population sizes, and population trends of the species;
4. Current or planned activities in the area and their possible impacts on the species;

5. The presence of archeological sites, buildings and structures, historic events, sacred and traditional areas, and other historic preservation concerns, which are required to be considered in project planning by the National Historic Preservation Act; and
6. Any other environmental issues that should be considered with regard to the proposed development and permit action.

Public Availability of Comments

Before including your address, phone number, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—might be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Next Steps

We will evaluate the application, associated documents, and any public comments we receive as part of our NEPA compliance process to determine whether the application meets the requirements of section 10(a) of the ESA. If we determine that those requirements are met, we will conduct an intra-Service consultation under section 7 of the ESA for the Federal action of potentially issuing an ITP. If the intra-Service consultation confirms that issuance of the ITP will not jeopardize the continued existence of any endangered or threatened species, or destroy or adversely modify critical habitat, we will issue a permit to the applicant for the incidental take of the covered species.

Authority

We provide this notice under section 10(c) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and its implementing regulations (50 CFR 17.32) and the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and its implementing regulations (40 CFR parts 1500-1508 and 43 CFR part 46).

Michael Fris,
Field Supervisor,
Sacramento Fish and Wildlife Office,
U.S. Fish and Wildlife Service,
Sacramento, California.

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